

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, May 28, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Susan Strickler	Vice Chair
	David M. Parker	Commissioner
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Collen Kruee	Compliance Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were James Stabler of CopperPoint Mutual and Jason Weber of Snell & Wilmer.

Approval of Minutes of May 14, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes of the May 14, 2015 Regular Session meeting on motion of Commissioner Parker, second of Commissioner Sanders.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C13/14-1874 Arizona Auto Shippers, L.L.C.
2. 2C14/15-1993 El Molino Mobile Home Park, L.L.C. dba El Molino Mobile Home Park
3. 2C14/15-2584 Fram, LLC dba Gus's New York Pizza
4. 2C14/15-2005 Joaquin Martinez & Carlota Martinez, h/w, dba Martinez Home Care
5. 2C14/15-1715 Money Sodhi, L.L.C., dba 4 One 4 Pub & Pizza
6. 2C13/14-2001 OSO Contracting, LLC

7. 2C14/15-1559 Twenty20 Windows, LLC dba Twenty20 Window Cleaning

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. ABF Freight Systems, Inc.
2. Honeywell International, Inc.
3. Maricopa County
4. MTD Southwest, Inc.
5. The Home Depot, Inc.

Chairman Schultz asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the Consent Agenda on motion of Commissioner Sanders, second of Vice Chair Strickler.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Laura McGrory stated that the three requests for approval are still pending at the Office of the Arizona Governor.

Discussion and Action Regarding Implementation of a Process for the use of Evidence Based Medical Treatment Guidelines to Treat Injured Workers under A.R.S. §23-1062.03.

Ms. McGrory invited Mr. James Stabler to address the Commission. She explained that he is the Chair of the pilot program steering committee and is here to provide an update.

Mr. Stabler commented on the interest in the workers' compensation community for the use evidence based medicine treatment guidelines and that some in the community have a lot of questions. He explained that the pilot program steering committee includes claimant's attorneys, defense counsel, claims professionals, and medical providers and he identified some of those who are on the committee. Mr. Stabler noted that the first meeting is scheduled for June 26, 2015. Ms. McGrory identified Commission staff who will participate in the committee.

Commissioner Parker commented that he appreciated Mr. Stabler's involvement and noted the importance of moving this matter forward. Mr. Stabler thanked Commissioner Parker for his comments and stated the most important thing is to dispel some of the trepidation that appears to exist with some in the community and the committee may also identify some components with the process that can be improved.

Ms. McGrory commented on the pilot program and noted that the Commission has obtained a scope of work to configure, develop, test and implement a web portal and an electronic work flow process for the second level administrative review, part of the recommendations the Commission had previously adopted. She described the cost of the project and that ASET (Arizona Strategic Enterprise Technology) has approved the Commission proceeding with the project. She explained why it was necessary for the Commission to obtain approval from ASET. She identified advantages and disadvantages with proceeding with the project at this time.

Vice Chair Strickler stated that there have been prior discussions about this and she thinks that getting the vendor to start the work now would probably be prudent because any changes that might be required as a result of the pilot program experience would not likely be monumental to

the process, and the Commission would be that much farther ahead verses waiting. She explained why she would err on starting the project now. Chairman Schultz asked for other comments. In response to a question from Commissioner Sanders, Ms. McGrory stated that the contractor could begin work immediately. Commissioner Sanders commented about the advantages to waiting until the pilot program is complete before moving forward with the project. Ms. McGrory identified the worst case scenario and how any change order could result in an increase in the project cost.

Commissioner Sanders noted that the pilot program steering committee is scheduled to meet in less than 30 days and asked Mr. Stabler for a sense of what might be learned from that meeting that might have an impact on the project. Mr. Stabler described his expectations with the first meeting. Mr. Stabler added that CopperPoint wants the use of evidence based medical guidelines to be a reality and the ease of being able to have a web-based portal is vital. He noted that anything that can be done to introduce technology to help the process be more efficient would be welcome.

Chairman Schultz questioned the estimated time to develop and implement the new system. Ms. McGrory responded the vendor has estimated it will take about 6 months to build and test a new system, but she noted projects tend to go longer. With respect to the length of the pilot program, Ms. McGrory explained that she would expect six months to be minimum for the pilot program to provide any meaningful information, but that the steering committee would be expected to provide a recommendation on that issue.

Chairman Schultz asked for details regarding the contract. Ms. McGrory described the contact as a fixed contract and she described the work performed to develop a comprehensive scope of work with detailed work flow processes so as to avoid any significant change orders or scope creep. She added that the contract price does not include annual maintenance.

Commissioner Parker stated he agreed that the value of moving forward with the project outweighs the value of waiting. He acknowledged that there may need to be changes which may incur additional cost but the process cannot move forward en masse until this system is in place. Commissioner Parker noted that the Commission may learn from the pilot program, there may be a few tweaks to the process, but if the Commission waits to develop the web-based portal and other components it means that much longer until employees get the benefit of evidence based medicine as well as the payers. He explained the benefits to claimants and payers. He stated that he would propose the Commission move forward with the project. Chairman Schultz agreed.

Chairman Schultz asked Ms. McGrory if a motion to approve is needed or if she would proceed with the project knowing that the Commission is supportive of going forward. Ms. McGrory responded that she had enough direction to proceed. Commissioner Sanders stated it appeared all Commissioners were supportive, but he was going to second Commissioner Parker if that was a motion. No motion was necessary.

Ms. McGrory noted that workshops have been added to the August Claims Seminar on how to use the ODG Treatment Guidelines. She explained that she and Mr. Ken Eichler will participate in each of the four workshops and that she will provide an update regarding the pilot program. She also explained that the Commission has arranged for Wi-Fi so it will be interactive for those who want to bring a laptop or tablet.

Chairman Schultz thanked Mr. Stabler.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH)
Discrimination Complaint.

14-2919-05 – Mark Lopez vs. Winslow Fire Department

William Warren asked that this agenda item be tabled. Chairman Schultz asked if there were any objection to this item being rescheduled to a subsequent agenda and, hearing none, Mr. Warren proceeded with the next item.

14-2919-13 – Marcia A. Vela vs. Tucson Unified School District, Rincon High School

William Warren presented a summary of Ms. Vela's complaint, the employer's response, and the results of the ADOSH investigation and responded to questions from the Commissioners. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support all of the elements necessary to pursue the matter further. Mr. Warren responded to questions from the Commissioners. Commissioner Parker commented on the facts and circumstances and typical expectations with mobility assignments. Commissioner Parker noted that he did not view the facts as supporting any adverse action, the employer behaved as would be expected, and he agrees with the recommendation not to pursue. Commissioner Sanders stated that if Commissioner Parker was moving to not pursue, he seconded the motion. Commissioner Parker clarified he was moving not to pursue. The Commission unanimously voted not to pursue the complaint.

14-2919-21 – George Williamson vs. Cantwell-Anderson, Inc.

William Warren presented a summary of Mr. Williamson's complaint, the employer's response, and the results of the ADOSH investigation and responded to questions from the Commissioners. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support pursuit. Mr. Warren responded to questions from the Commissioners. Commissioner Sanders commented on the employee's actions in the context of defending himself. Ms. Krueree provided additional details regarding her interviews. Commissioner Parker commented on his view of the facts and circumstance. Chairman Schultz noted the employee had ample opportunity to remove himself from the situation, his response was not in compliance with this prior instruction and within the policies of the organization. The Commission unanimously voted not to pursue the complaint on motion of Commissioner Sanders, second of Vice Chair Strickler.

Mr. Warren thanked Ms. Krueree, noting that tomorrow is her last day with ADOSH and she has done a fabulous job for the last year. Commissioner Parker commented on the quality of her reports. Chairman Schultz and Commissioner Sanders both wished her well.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations
and Penalties.

Suntec Concrete, Inc.
2221 W. Shangri-La Rd.
Phoenix, AZ 85029

Site Location: 3300 W. Camelback Rd.
Phoenix, AZ 85017
Inspection No: U9805-1044947

Fatality/Accident
Years in Business: 30
Empl. Covered by inspection: 15

Inspection Date: 3/05/2015

Mr. Warren summarized ADOSH's investigation into a fatal accident, explained that the investigation did not identify any violations, and ADOSH was not recommending any citations.

Trendwood, Inc.

2402 S. 15th Ave

Phoenix, AZ 85007

Site Location: 2402 S. 15th Ave
Phoenix, AZ 85007

Inspection No: V1001-1049796

Inspection Date: 3/30/2015

Referral

Years in Business: 30

Empl. Covered by inspection: 25

SERIOUS – Citation 1 - Item 1 –

a) The employer did not establish an energy control program, or energy control procedures for a double-ended tenoning machine serial number 78309 model number FT200D in order to prevent the unexpected startup or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment. (29 CFR 1910.147(c)(1)).

b) The employer did not have available upon request, a written certification to verify authorized and affected employees have attended lockout tagout training and understood the content of the training. (29 CFR 1910.147(c)(7)(i)).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

SERIOUS – Citation 1 - Item 2 –

a) Machine shop: A Fletcher Tolbert Double Ended Tenoning machine model number FT 200D serial number 78309 did not have the blades guarded to prevent the hands or fingers of the operator from coming in contact with the blades and cutting heads. (29 CFR 1910.213(k)(3)).

b) Machine shop: A Fletcher Tolbert Double Ended Tenoning machine model number FT 200D serial number 78309 with a belt sanding machine attached to the side was not effectively guarded to prevent the hands or fingers of the operator from coming in contact with the nip points. (29 CFR 1910.213(p)(4)).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

TOTAL PENALTY - \$9,000.00

TOTAL FORMULA AMT. - \$9,000.00

Mr. Warren summarized the citations and proposed penalty as listed. Commissioner Sanders asked for additional details regarding the employee's injury and about the Tenoning machine. Mr. Warren responded to the questions. Commissioner Parker suggested the employer consider having some employees attend a lock-out-tag-out class, and commented on the employer's obligation for an annual review and inspection. Chairman Schultz asked for more details regarding the emergency stop and whether the stop activated a blade brake. Mr. Warren responded to the question. Commissioner Sanders asked about test procedures for the emergency stop. Mr. Warren responded to the question. Commissioner Parker asked about the emergency stop and Mr. Warren responded to the question. Chairman Schultz referred to mounted photograph number 2 and asked about the emergency stop and the lock-out. Mr. Warren

responded to the question. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$9,000.00 on motion of Commissioner Parker, second of Commissioner Sanders.

American Fitness Wholesalers of AZ, Inc.
455 W. 21st St Ste 107
Tempe, AZ 85282

Complaint
Years in Business: 22
Empl. Covered by inspection: 8

Site Location: 455 W. 21st St Ste 107
Tempe, AZ 85282
Inspection No: W0250-1051258
Inspection Date: 4/6/2015

SERIOUS – Citation 1 - Item 1 – Warehouse: Where storage racks are loaded and unloaded utilizing a forklift, the rack columns were not anchored to the floor. (A.R.S. 23-403(A)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Inside Southeast Corner of Building: One employee working at a height of approximately 14 feet above the concrete floor was not protected from falling by standard railings or an equivalent means. (29 CFR 1910.23(c)(1)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – One employee was not trained in the safe operation of a Komatsu Forklift model FB15MHZ serial number 609523, which had been used to load and unload palletized fitness products from delivery trucks. (29 CFR 1910.178(l)(1)(i)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Assembly area: One Komatsu forklift, model number FB15MHZ, serial number 609523-A, was not taken out of service for the unsafe condition of a missing seat belt. (29 CFR 1910.178(p)(1)).
Div. Proposal - \$750.00 Formula Amt. - \$750.00
TOTAL PENALTY - \$3,000.00 TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citations and proposed penalty as listed. Commissioner Parker commented on the lack of anchoring the storage racks to the floor, and some considerations for citations under A.R.S. § 23-403. He added that some employers may not anchor storage racks to the floor but the racks are bolted together to provide some stability. Commissioner Parker referred to the photographs and noted that the storage racks are loaded heavy on the top and little to nothing on the bottom, they are not bolted together, making them freestanding shelves, and that this practice is not a common practice in the industry. Mr. Warren described additional information concerning practices in the industry. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,000.00 on motion of Commissioner Sanders, second of Commissioner Parker.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory stated that she has provided the Commissioners with a packet of information related to the Physicians' Fee Schedule, which will be an agenda item for June 11, 2015 Commission. She invited the Commissioners to contact her if there were any questions. She also commented on a meeting she had with staff from the National Council on Compensation Insurance.

Mr. Warren announced that the venue for the ADOSH Safety Summit scheduled for July 22, and 23, 2015 has tentatively been relocated to Northern Arizona University.

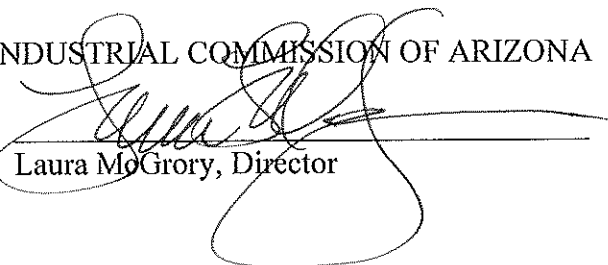
Chairman Schultz personally thanked Vice Chair Strickler for all she has done for him to help bring him up to speed and for all of the work that she has done for the Commission. Vice Chair Strickler said that serving on the Commission has been a very interesting and rewarding experience and she appreciated the opportunity.

The Commission reviewed the meeting schedule through July. The Commission discussed scheduling the public hearing on the assessment under A.R.S. § 1065(F) for June 18, 2015.

Chairman Schultz asked if there was a motion to adjourn. Commissioner Sanders moved to adjourn and Vice Chair Strickler seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:09 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary